

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Levy et al.
Application No.: 10/804,581

Art Unit: 2425
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For: SYNCHRONIZING BROADCAST
CONTENT WITH CORRESPONDING
NETWORK CONTENT

VIA ELECTRONIC FILING

Examiner: R. Stronczer

Date: June 3, 2009

APPEAL BRIEF

This Appeal Brief is in furtherance of the Notice of Appeal filed March 3, 2009. Please charge the fee required under 37 CFR 41.20 or any deficiency thereof to deposit account 50-1071.

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I REAL PARTY IN INTEREST

The real party in interest is Digimarc Corporation, by an assignment from the inventor recorded at Reel 015639, Frames 0949-0950, on August 2, 2004, and by Confirmation of Transfer recorded at Reel 021785, Frame 0796.

II RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

Claims 1-29 are pending, finally rejected and appealed.

IV. STATUS OF AMENDMENTS

There are no amendments subsequent to the final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1 is directed to a method of synchronizing broadcast content with dynamic network content at a network address. This method, for example, enables broadcast content, such as TV or radio broadcasts, to be synchronized with content at a web site at the network address, such as the home page of the broadcaster. One example is where the home page of a home shopping channel broadcaster is updated with content about the product being demonstrated in a TV broadcast of the home shopping channel. This home page has a network address that consumers readily associate with the broadcaster. Due to the live nature of the broadcast, the products showcased in the live broadcast change frequently. The broadcaster would like the products showcased on the home page at the home page's web address to be synchronized with the products showcased on the live broadcast. Thus, there is a need for a method of synchronizing the broadcast content with the content showcased on the home page, for example. See, for example page 3, line 22 to page 4, line 8 and Fig. 1.

The method of claim 1 extracts an identifier embedded in broadcast content. See, e.g.,

page 9, lines 3-14; Fig. 3, 110. The method uses the identifier to identify corresponding network content. See, e.g., page 9, lines 20-23; Fig. 3, 112.

After the corresponding network content thereby has been identified, the method posts the corresponding network content on a network device located at the network address. See, e.g., page 9, lines 24-29; Fig. 3, 114. The network device is made responsive to requests sent to the network address to provide the network content over a network. See, e.g., page 9, line 25- page 10, line 7; Fig. 3, 116. The broadcast content is synchronized with the corresponding network content. For example, the content displayed at the web site is updated so that it depicts information that is synchronized with the information being broadcast in the broadcast content.

Claim 2 specifies that the broadcast content of claim 1 comprises a video program, and the identifier is embedded in the video program. E.g., home shopping programs, page 3, line 28.

Claim 3 specifies that the identifier in claim 2 is embedded in a video track of the video program with a video watermark that modifies frames of video data to encode the identifier in the video frames in a substantially imperceptible manner.

E.g., page 7, lines 4-5 and 11-21.

Claim 4 specifies that the identifier is embedded in an audio track of the video program with an audio watermark that modifies an audio signal to encode the identifier in the audio signal in a substantially imperceptible manner. E.g., page 7, lines 4-5.

Claim 5 specifies that the identifier of claim 1 triggers automatic posting of the corresponding network content. E.g., page 9, line 20 to page 10, line 7.

Claim 6 specifies that the dynamic network content of claim 1 comprises sets of HTML content, each set corresponding to a particular item, each set being prepared prior to broadcast of programs relating to the particular items. E.g., page 5, line 27 to page 6, line 5.

Claim 7 specifies that the particular items of claim 6 comprise products or services, and the programs comprise shopping programs that are broadcast to sell the products or services. E.g., page 4, lines 12-15, and page 7, lines 6-10.

Claim 8 specifies that the broadcast of the programs of claim 6 are live broadcasts, and the identifiers are embedded in the live broadcasts to synchronize the live broadcasts with dynamic HTML content accessible at the network address. E.g., page 5, line 27 to page 6, line 5.

Claim 9 specifies that the broadcast content of claim 1 comprises a radio broadcast. E.g., page 7, lines 2-3.

Claim 10 specifies that the broadcast content of claim 9 comprises a satellite radio broadcast. E.g., page 7, line 2.

Claim 11 specifies that the identifiers of claim 1 enable synchronizing of dynamic network content accessed by users at a single URL with broadcast content (e.g., page 9, lines 21-23), and also provide a link to network information about the broadcast content (e.g., page 11, line 1 to page 13, line 2).

Claim 12 specifies that the link of claim 11 is used to return content relating to the broadcast to a user's device in response to a request from the user. E.g., page 12, lines 10-17.

Claim 13 specifies that the content returned to the user's device of claim 12 enables the user to conduct an electronic transaction relating to the program. E.g., page 12, lines 18-25.

Claim 14 specifies that the electronic transaction of claim 13 comprises an electronic order to purchase an item that is advertised in the program. E.g., page 12, lines 10-25.

Claim 15 specifies that the request from the user of claim 12 is generated in part based on extracting the identifier from the broadcast content. E.g., page 11, line 26 to page 12, line 9.

Claim 16 specifies that the extracting of the identifier used to generate the request of claim 15 is performed on the user's device. E.g., page 11, line 28-29.

Claim 17 specifies that the user's device of claim 16 is a cell phone. E.g., page 12, lines 6-17.

Claim 18 specifies that the user's device of claim 12 includes a process for extracting identifiers embedded in broadcast content received on the user's device. E.g., page 11, lines 26-29.

Claim 19 specifies that the process for extracting identifiers of claim 18 comprises a digital watermark decoding process for extracting digital data that is substantially imperceptibly embedded in audio or video signals of broadcast programs. E.g., page 11, line 7.

Claim 20 specifies that the user's device of claim 12 provides information about the user's device to enable information returned to the user to be customized to the user's device. E.g., page 12, lines 2-9.

Claim 21 specifies that the user's device of claim 12 provides information about the user to enable information returned to the user to be customized to the user. E.g., page 12, lines 4-5.

Claim 22 specifies that the information about the user of claim 21 provides an account number to facilitate electronic transactions on the device relating to the broadcast content. E.g., page 12, lines 5-9.

Claim 23 specifies that the identifier of claim 1 is used to notify a network operator that network content is not properly synchronized with the broadcast content. E.g., page 10, lines 8-13.

Claim 24 is directed to a system for synchronizing web content accessed at a URL with broadcast content. One example is where the home page of home shopping channel's web site is updated with content about the product being demonstrated in a TV broadcast of the home shopping channel. See, for example page 3, line 22 to page 4, line 8 and Fig. 1. In this case, it is not completely pre-determined when products will be promoted during the TV program, yet there is a desire to have the home page of the web site updated with product information for the products currently being discussed in the broadcast.

The system includes a database associating web content identifiers with corresponding web content relating to items that are subjects of broadcast programming. E.g., page 4, lines 16-28; database 24, Fig. 1. The system also includes an embedder for embedding the web content identifiers into broadcast programs. E.g., page 8, line 11 to 21, and embedder 34 in Fig. 1. The embedder uses the items that are subjects of the broadcast programming to select web content identifiers for embedding into the broadcast programming. E.g., page 7, line 11 to page 8, line 21. A web site control is operative to extract the web content identifiers and ensure that the corresponding web content is posted at said URL when corresponding broadcast programming is broadcast. E.g., page 8, line 27 to page 10, line 13.

Claim 25 specifies that the embedder of claim 24 comprises a digital watermark embedder for modifying audio or video signals of a broadcast program to encode the identifiers in a substantially imperceptible manner in the audio or video signals.

Claim 26 specifies that identifiers of claim 24 are decodable by consumer devices to link the consumer devices to network content relating to the broadcast programming. E.g., page 11,

lines 7-10 and lines 20-27.

Claim 27 specifies that the system of claim 24 includes an input device operable to receive an item name of an item that is the subject of a live broadcast from an operator, and in response, looking up a corresponding web content identifier associated with the item name. E.g., page 7, line 26 to page 8, line 21.

Claim 28 specifies that the system of claim 24 includes an input device operable to receive a web content identifier for an item that is the subject of a live broadcast from an operator. E.g., page 7, line 26 to page 8, line 21.

Claim 29 specifies that the broadcast of claim 24 comprises live programming and pre-recorded programming relating to an item, and the pre-recording programming is embedded with a web content identifier for the item prior to the live programming. E.g., page 8, lines 23-25.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- The drawings are objected to as allegedly not showing features of claim 23;
- Claim 26 is rejected as being indefinite for lack of antecedent basis of consumer devices;
- Claims 1, 2, 5-8, 11-16, 18, 20-24, and 26-29 are rejected under 35 U.S.C. Section 103(a) as being unpatentable over a combination of U.S. Patent No. 6,018,768 to Ullman et al. ("Ullman") and U.S. Patent Publication 2004/0139474 of Carro ("Carro");
- Claims 3, 4, 9, 10, 19 and 25 are rejected under 35 U.S.C. Section 103(a) as being unpatentable over Ullman, Carro and U.S. Patent Publication 2002/0162118 to Levy et al. ("Levy"); and
- Claim 17 is rejected under 35 U.S.C. Section 103(a) as being unpatentable over Ullman, Carro and U.S. Patent Publication 2002/0152388 to Linnartz et al.

VII.**ARGUMENT****Objection to the Drawings**

Regarding the objection to the drawings, Fig. 1 and the other Figures, along with the specification, adequately teach one of skill in the art how to make and use the invention of claim 23, and as such, the elements of claim 23 are adequately shown to provide an understanding of the invention according to 37 C.F.R. 1.81. Fig. 1, for example, shows a system in which the method of claim 23 can be implemented. In particular, the specification teaches that the ID extractor 42, along with the staging system and server 50, 52 in Fig. 2, can be used to implement an embodiment of the method of claim 23 by warning the web site operator as described at page 10, lines 8, 13.

Rejection of claim 26 under 35 U.S.C. 112

Regarding the rejection of claim 26 under 35 U.S.C. 112 as being indefinite, the term "consumer devices" is properly introduced in this claim and then referenced later as "the consumer devices."

Rejection of Claims 1, 2, 5-8, 11-16, 18, 20-24, and 26-29 over Ullman and Carro**Claims 1 and 2**

As summarized above, claim 1 recites a method of synchronizing broadcast content with dynamic network content at a network address. This method extracts an identifier embedded in broadcast content, uses the identifier to identify corresponding network content, and after the corresponding network content thereby has been identified, posts the corresponding network content on a network device located at the network address to synchronize the network content that is responsive to requests at the network address with the broadcast content. The combined teachings of Ullman and Carro fail to suggest this method of synchronizing broadcast content with dynamic network content at a network address because they lack the act of synchronizing by posting the identified network content to the network device, which is then responsive to request for this content via the network. Indeed, with no act of posting the identified network content to a network device at the network address, there is no such notion of synchronizing broadcast and

network content in the combined teachings of Ullman and Carro. Ullman and Carro simply teach ways of looking up network content relating to a video broadcast. Ullman uses a direct look up method using URL codes decoded from the Vertical Blanking Interval of video, while Carro uses an indirect look up using time and channel information to look up corresponding URLs. These references fail to teach a synchronization method as claimed because they do not suggest posting the identified network content on a network device located at the network address, which is then responsive to requests for that posted network content.

The following discussion provides an analysis of Ullman and Carro and explains this point in more detail.

As shown in Fig. 2 of Ullman, Ullman teaches a server URL decoder 24 that extracts URL codes from a video broadcast and sends them to an Internet server, which in turn, sends the URL codes to the user's PC. Carro teaches a similar function as Ullman, but instead of extracting the URL codes from the broadcast, it uses the channel and viewing time to look up URLs. Applicant acknowledges that both Ullman and Carro identify network content through URL codes. However, neither Ullman nor Carro teach posting of the identified network content as claimed. The Office expressly acknowledges this defect of Ullman in its rejection, but Applicants respectfully submit that it incorrectly relies on Carro as teaching the elements that are admitted to be missing from Ullman.

After closer study of Carro, it is clear that Carro does not teach or suggest the elements of claim 1 that are missing from Ullman. Carro's system operates as follows:

1. A user views a broadcast program and finds topics of interest. See paragraph [0172] and Fig. 1.
2. The user selects the topics on his "user device" (308 in Fig. 3) by selecting the channel and viewing time. See paragraphs [0173-0180] and Figs. 2 and 3.
3. The user device records the channel and time of viewing corresponding to the topics of interest in a Universal Time Table 401 (Fig. 4 shows an example of this Universal Time Table, with three entries: channel, selection time, and URL of the channel information server for the channel). See paragraphs [0181-0182].
4. The user device sends the selection of the channel and time as stored in the Universal

Time Table (505) to the channel information server (502) to retrieve the names and URLs of corresponding hyperlinks for that channel and time. See paragraphs [0185-0188] and Fig. 5.

5. The channel server (602) returns to the user's computer, the updated table that correlates the channel and time with the corresponding name and URLs. See paragraphs [0189-0190] and Figs. 6 and 7.

Carro does not teach posting the corresponding network content on a network device located at the network address as claimed in the novel combination of claim 1. The channel information server stores a table that provides URLs corresponding to times for a particular broadcast channel. In effect, the times and channels indirectly identify the URL codes, but Carro's system needs the channel information server to identify the URL code by using the time and channel to look up pre-stored URLs at the channel information server. Carro teaches an indirect way of looking up URLs relating to broadcast content by using time and channel information. Carro uses the term "synchronization" in the context of this use of broadcast time to look up corresponding URLs that are stored at the channel information server for given time intervals. While this association of URLs and times is updated in a database of the channel information server during transmission of a broadcast as indicated in paragraph [0108] of Carro, there is nothing in either reference that suggests that this impacts the posting of corresponding network content on a network device at these URL addresses. The URL codes themselves are not "corresponding network content on a network device located at the network address." Moreover, simply updating the URL codes for time intervals in the database on the channel information server does not provide one of skill in the art relevant teachings on the missing elements from Ullman because the updating of the channel information server is not performed "after the corresponding network content thereby as been identified" as claimed. Instead, Carro updates the channel information server in a manner that is independent of any identifiers in the broadcast content.

Relative to Ullman, Carro only adds that the user device can look up the URLs through a database in the channel information server by providing the channel information server with the viewing time. The channel information server in Carro simply stores a table that matches time intervals with URLs. The network content that is identified by these URLs is not posted to the

network device at the network address after that network content is identified as claimed. There is no posting of “the corresponding network content” to the channel information server or the web servers at the identified URLs after the network content has been identified. Likewise, in Ullman, there are no postings to the Internet server as claimed. Thus, one of skill in the art could not find the necessary teachings to assemble all of the elements of a method for synchronizing broadcast content with dynamic network content posted at a network address after the network content is identified as claimed because neither one teaches posting network content in the manner claimed.

Claim 5

Regarding claim 5, the elements of claim 5 are not inherent in Fig. 2 of Ullman. As explained at col. 5, line 62, to col. 6, line 2 of Ullman, the URL decoder 24 strips out the URL codes and sends them to Internet server 28, which delivers the URL code to the user PC 16. The posting of network content to the network device at the address represented by those URL codes is not discussed, and therefore, there is no teaching how or when that posting occurs. Since there are multiple methods in which that posting might occur, the claimed method of posting cannot be inherent in Ullman.

Claims 6

Regarding claim 6, the Office's position of inherency is based on the incorrect assertion that the updated universal time table 701 in Carro represents network content that is updated in response to decoding a URL code in Ullman (namely URL decoder 26, in Fig. 2 of Ullman). There at least two errors in the Office's assertion of inherency. First, the Office is mixing disparate teachings of two different references (Carro's universal time table with Ullman URL decoder) while attempting to assert that the claim element is inherent in one reference (namely, Carro). The position that a particular claim element is inherent in one reference cannot be made when combining different teachings in different references. Second, the updated universal time table 701 of Carro is updated on the user device, not the channel information server, by retrieving pre-stored information from the channel information server and entering it in the table on the user device so that the table is updated on the user device (not the server). See paragraph [0196] of Carro. There is no updating or posting of network content occurring on the channel information

server in this teaching of Carro, but instead, pre-stored URLs are merely being retrieved by the user device to update the table on the user device. This updating of the user device in Carro is not posting to a network device because the user device is not responsive to requests sent to the network address to provide the network content over a network as recited in the claim.

Claim 7

Ullman's suggestion that its system can be used to direct user's to the Internet to buy products does not lead to the conclusion that Ullman's method teaches the claimed method of synchronizing dynamic HTML content about a particular product or service with a broadcast of a shopping program to sell the product or service. The reason for this is that there is no suggestion in Ullman that the network content identified by the decoded URLs is posted to the network in a manner that synchronizes it with the broadcast. Ullman's network content can be posted at any time, and there is no disclosure in either Carro or Ullman that network content is posted in a manner to synchronize it with a broadcast as claimed.

Claim 8

The rejection of claim 8 relies on the same incorrect assumptions as claim 6. Further, there is no suggestion in the cited art that identifiers are embedded in live broadcasts to synchronize the live broadcasts with dynamic HTML content accessible at the network address.

Claims 11-16, 18

Claim 11 recites two primary acts:

1. the identifiers enable synchronizing of dynamic network content accessed by users at a single URL with broadcast content; and
2. also provide a link to network information about the broadcast content.

At most, Carro and Ullman teach ways to link to network information (either by URLs in Ullman, or by indirectly looking up URLs with time/channel as in Carro). In neither case do the identifiers enable synchronizing of the dynamic network content accessed at a single URL with the broadcast content.

The rejection of claim 11 is based on inherency within an incorrect combination of Ullman and Carro, and therefore has similar problems as the rejection of claim 6. As stated in paragraphs [0189] and [0196] and shown in Fig. 6 of Carro, the user device sends the viewing

time to the channel information server and gets back URLs (603), which are then updated in the universal time-table in the user device. The Office's assertion that users go to the channel information server to see a dynamically updated list of URLs embedded in the video program is not correct. Instead, the user device retrieves the URLs that are pre-stored on the channel information server in a manner that is not related to anything embedded in the video program. Moreover, there is no teaching that the HTML content located at these URLs is dynamically updated. Carro's teaching of updating the database on the channel information server with URLs for time intervals does not teach or suggest that the HTML content at the locations represented by these URLs is dynamically updated.

Claims 24, 26-29

Regarding claim 24, the contention that the web site control is inherent in "extracting the URL from the video broadcast and updating universal time table 701 of Carro" is erroneous because Carro does not extract URLs from the video broadcast. The Office cannot base an inherency argument based on the disparate teachings of different references. Moreover, as explained above, the updating of the universal time table 701 is performed on the user device in Carro and does not involve posting web content at said URL when corresponding content is broadcast. Therefore, the Office has cited Carro as teaching posting of web content, which it does not teach in the manner claimed.

Rejection of Claims 3, 4, 9, 10, 19 and 25 over the Combination of Carro, Ullman and Levy

Claims 3, 4, 9, 10, 19, and 25

The Office correctly notes that Levy teaches applications of watermarking in TV signals. Levy does not teach the claimed aspects of synchronizing broadcast and network content that are missing from Ullman and Carro as noted above, nor does it suggest such an application for digital watermarking. Therefore, the combined teachings of these references fail to suggest all of the elements of these claims. In addition, since there is no teaching or suggestion to one of skill in the art to use Levy's teachings for synchronization applications as claimed.

Rejection of Claim 17 over the Combination of Carro, Ullman and Linnartz

Claim 17

Linnartz references a mobile phone that detects a watermark and decodes a URL. It does

not teach the claimed aspects of synchronizing broadcast and network content that are missing from Ullmam and Carro as noted above, nor does it suggest such an application for digital watermarking. Therefore, the combination is improper and does not render claim 17 obvious.

VIII. CONCLUSION

For the above reasons, the objection and rejections must be reversed, and the claims indicated to be allowed over the applied art.

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CLAIMS APPENDIX

Appealed Claims

1. A method of synchronizing broadcast content with dynamic network content at a network address, the method comprising:

extracting an identifier embedded in broadcast content;

using the identifier to identify corresponding network content; and

after the corresponding network content thereby has been identified, posting the corresponding network content on a network device located at the network address, the network device being responsive to requests sent to the network address to provide the network content over a network; wherein the broadcast content is synchronized with the corresponding network content.

2. The method of claim 1 wherein the broadcast content comprises a video program, and the identifier is embedded in the video program.

3. The method of claim 2 wherein the identifier is embedded in a video track of the video program with a video watermark that modifies frames of video data to encode the identifier in the video frames in a substantially imperceptible manner.

4. The method of claim 2 wherein the identifier is embedded in an audio track of the video program with an audio watermark that modifies an audio signal to encode the identifier in the audio signal in a substantially imperceptible manner.

5. The method of claim 1 wherein the identifier triggers automatic posting of the corresponding network content.

6. The method of claim 1 wherein the dynamic network content comprises sets of HTML content, each set corresponding to a particular item, each set being prepared prior to broadcast of programs relating to the particular items.

7. The method of claim 6 wherein the particular items comprise products or services, and the programs comprise shopping programs that are broadcast to sell the products or services.

8. The method of claim 6 wherein the broadcast of the programs are live broadcasts, and the identifiers are embedded in the live broadcasts to synchronize the live broadcasts with dynamic HTML content accessible at the network address.

9. The method of claim 1 wherein the broadcast content comprises a radio broadcast.

10. The method of claim 9 wherein the broadcast content comprises a satellite radio broadcast.

11. The method of claim 1 wherein the identifiers enable synchronizing of dynamic network content accessed by users at a single URL with broadcast content, and also provide a link to network information about the broadcast content.

12. The method of claim 11 wherein the link is used to return content relating to the broadcast to a user's device in response to a request from the user.

13. The method of claim 12 wherein the content returned to the user's device enables the user to conduct an electronic transaction relating to the program.

14. The method of claim 13 wherein the electronic transaction comprises an electronic order to purchase an item that is advertised in the program.

15. The method of claim 12 wherein the request from the user is generated in part based on extracting the identifier from the broadcast content.

16. The method of claim 15 wherein the extracting of the identifier used to generate the request is performed on the user's device.

17. The method of claim 16 wherein the user's device is a cell phone.

18. The method of claim 12 wherein the user's device includes a process for extracting identifiers embedded in broadcast content received on the user's device.

19. The method of claim 18 wherein the process for extracting identifiers comprises a digital watermark decoding process for extracting digital data that is substantially imperceptibly embedded in audio or video signals of broadcast programs.

20. The method of claim 12 wherein the user's device provides information about the user's device to enable information returned to the user to be customized to the user's device.

21. The method of claim 12 wherein the user's device provides information about the user to enable information returned to the user to be customized to the user.

22. The method of claim 21 wherein the information about the user provides an account number to facilitate electronic transactions on the device relating to the broadcast content.

23. The method of claim 1 wherein the identifier is used to notify a network operator that network content is not properly synchronized with the broadcast content.

24. A system for synchronizing web content accessed at a URL with broadcast content, the system comprising:

a database associating web content identifiers with corresponding web content relating to items that are subjects of broadcast programming;

an embedder for embedding the web content identifiers into broadcast programs, the

embedder using the items that are subjects of the broadcast programming to select web content identifiers for embedding into the broadcast programming; and

a web site control operative to extract the web content identifiers and ensure that the corresponding web content is posted at said URL when corresponding broadcast programming is broadcast.

25. The system of claim 24 wherein the embedder comprises a digital watermark embedder for modifying audio or video signals of a broadcast program to encode the identifiers in a substantially imperceptible manner in the audio or video signals.

26. The system of claim 24 wherein the identifiers are decodable by consumer devices to link the consumer devices to network content relating to the broadcast programming.

27. The system of claim 24 including an input device operable to receive an item name of an item that is the subject of a live broadcast from an operator, and in response, looking up a corresponding web content identifier associated with the item name.

28. The system of claim 24 including an input device operable to receive a web content identifier for an item that is the subject of a live broadcast from an operator.

29. The system of claim 24 wherein the broadcast comprises live programming and pre-recorded programming relating to an item, and the pre-recording programming is embedded with a web content identifier for the item prior to the live programming.

EVIDENCE APPENDIX

There is no evidence appendix under 37 C.F.R. Section 41.37(c)(ix).

RELATED PROCEEDINGS APPENDIX

There are no related proceedings under 37 C.F.R. Section 41.37(c)(x).